

STATE OF CALIFORNIA
ENVIRONMENTAL PROTECTION AGENCY
DEPARTMENT OF TOXIC SUBSTANCES CONTROL

In the Matter of:

Docket HWCA 20020100

Kinsbursky Brothers, Inc.
1314 N. Anaheim Boulevard
Anaheim, California 92801

CONSENT ORDER

Health and Safety Code
Section 25187

CAD088504881

Respondent.

INTRODUCTION

The California Department of Toxic Substances Control (Department) and Kinsbursky Brothers, Inc. (Respondent) enter into this Consent Order and agree as follows:

1.1. Site. Respondent handles, treats, and stores hazardous waste at 1314 N. Anaheim Boulevard, Anaheim, California 92801 (Site).

1.2. Inspection. The Department inspected the Site on July 31, 2002.

1.3. Permit Status. Respondent operates pursuant to a Hazardous Waste Facility Permit (No. 98-SC-003), effective August 4, 1998.

1.4. Jurisdiction. Section 25187 of the Health and Safety Code authorizes the Department to order action necessary to correct violations and assess a penalty when the Department determines that any person has violated specified provisions of the Health and Safety Code or any permit, rule, regulation, standard, or requirement issued or adopted pursuant thereto.

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1.5. Dispute. A dispute exists regarding the violations alleged below. The parties wish to avoid the expense of litigation and to ensure prompt compliance. Respondent contends that the likely cause of the fires was improper packaging and handling prior to arrival at the Site, and that there is nothing Respondent can do to prevent all fires.

1.6. Full Settlement. This Consent Order shall constitute full settlement of the violations alleged below, but does not limit the Department from taking appropriate enforcement action concerning other violations.

1.7. Definition of Terms. The terms used in this Consent Order are defined in the California Code of Regulations, title 22, section 66260.10, except as otherwise provided.

VIOLATIONS ALLEGED

2. The Department alleges the following violations:

2.1. The Respondent violated Health and Safety Code section 25202 and California Code of Regulations, title 22, section 66264.31 in that on or about July 4, 2002, June 19, 2002, and January 19, 2002 fires occurred that were attributed to the hazardous waste batteries that the Respondent stores or accepts.

SCHEDULE FOR COMPLIANCE

3. Respondent shall comply with the following:

3.1.1. Respondent has implemented the following corrective measures to prevent future fires from the ignition of lithium batteries, to the extent practicable, and lessen the severity should a short circuit occur. Respondent shall continue to implement these measures except as specified in this Consent Order and Respondent's permit, or as

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required by law or regulation.

(a) Respondent is storing all lithium batteries in Unit 12 of the Site (as identified in Respondent's Hazardous Waste Facility Permit) to minimize any potential for fire or explosion until the batteries are shipped off-site as quickly as is practicable. All lithium batteries are stored in a metal container, with the exception of those batteries which do not pose a reaction hazard (e.g., drill rod batteries, which are contained within used drill rods).

(b) Respondent has notified all of its lithium battery suppliers that lithium batteries must be shipped in proper DOT steel drums with the terminals insulated, with the exception of those batteries which do not pose a reaction hazard.

(c) Within a reasonable time of receipt, Respondent is repackaging all lithium batteries it receives that are not sent in DOT steel drums, with the terminals insulated, or otherwise so as not to create a foreseeable risk of fire or explosion.

3.1.2. Contingency Plan. Respondent shall submit a draft revised Contingency Plan, addressing emergency procedures for responding to ignition of specific battery chemistries, to the Department as soon as practicable but no later than 30 days after the effective date of the Consent Order.

3.1.3. Topical Training. Respondent shall prepare a draft Guidance Document describing proper handling and packaging methods for small lead acid gates, gel cell, and lithium primary batteries. When complete, the Guidance Document will include a photo journal of each battery type and demonstrate correct insulation and packaging of the

batteries for storage or transportation onto the Site. The Guidance Document will form the basis of employee training for handling these battery types. A preliminary draft of the Guidance Document will be submitted to the Department within 30 days of the effective date of the Consent Order.

3.1.4. Customer Notification. Within 30 days of providing the preliminary draft Topical Training document to the Department, Respondent shall prepare a Customer Notice, incorporating the draft Topical Training Guidance Document, to its lithium battery suppliers. Respondent shall update the Customer Notice within 30 days of submitting to the Department any revised draft Topical Training Guidance Document as described in 3.1.3. , above, and shall make available any revised Customer Notice to the battery suppliers directly affected by the revision. The Customer Notice, including any revisions, shall be made available to all of Respondent's suppliers upon request.

3.1.5. Continuing Updates and Revisions. Respondent has a continuing duty to ensure that the documents specified in paragraphs 3.1.2., 3.1.3., and 3.1.4., above, are current and up-to-date. Revised drafts of the Guidance Document and Customer Notice, incorporating handling instructions for other battery types, will be submitted to the Department within a reasonable amount of time after Respondent receives and processes sufficient stock of each battery type. Respondent shall investigate and research handling instructions and potential for fire/explosion for any unfamiliar battery types that are received at the Site, and incorporate relevant findings into its submittals to the Department.

3.1.6. Respondent shall implement recommendations on a test basis. Within 180

days of the effective date of this Consent Order, Respondent shall submit a final proposal to the Department containing a statement of the actual or most likely causes of the events described in Paragraph 2.1. This report shall include a status report and any revisions of the requirements specified above.

3.1.7. Within 60 days of receiving comments from the Department pursuant to 3.1.6. above, Respondent shall submit a permit modification based on said proposal modified in accordance with comments provided by the Department. This submittal shall contain proposed language to address the hazards associated with battery ignition from contact between battery terminals or other foreseeable causes.

3.1.8. In the event that any of the provisions of paragraphs 3.1.1 through 3.1.7, inclusive, conflict with the provisions of a permit or permit modification issued subsequently to the effective date of this Consent Order, that permit or permit modification shall control. The failure of any such subsequent permit or permit modification to address the subject matter of paragraphs 3.1.1 through 3.1.7, inclusive, shall not constitute a conflict.

3.2. Submittals. All submittals from Respondent pursuant to this Consent Order shall be sent simultaneously to:

Chia Rin Yen
Hazardous Substances Scientist
Permitting Division
Department of Toxic Substances Control
1011 North Grandview Avenue
Glendale, CA 91020

Pamela LePen
Senior Hazardous Substances Scientist

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Statewide Compliance Division
Department of Toxic Substances Control
5796 Corporate Avenue
Cypress, CA 90630

Grant Miner
Hazardous Materials Specialist
Anaheim Fire Department
201 S. Anaheim Blvd., Suite 300
Anaheim, CA 92805

Original documents shall be sent to Chia Rin Yen, copies to the other persons named above.

3.3. Communications. All approvals and decisions of the Department made regarding submittals and notifications shall be communicated to Respondent in writing by the Branch Chief, Department of Toxic Substances Control, or his/her designee. No informal advice, guidance, suggestions, or comments by the Department regarding reports, plans, specifications, schedules, or any other writings by Respondent shall be construed to relieve Respondent of its obligation to obtain such formal approvals as may be required.

3.4. Department Review and Approval. If the Department determines that any report, plan, schedule, or other document submitted for approval pursuant to this Consent Order fails to comply with the Order or fails to protect public health or safety or the environment, the Department may return the document to Respondent with recommended changes and a date by which Respondent must submit to the Department a revised document incorporating the recommended changes, but the time for submitting a revised

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document shall be no less than 30 days from the date on which the Department returns the document.

3.5. Compliance with Applicable Laws. Respondent shall carry out this Consent Order in compliance with all local, State, and federal requirements, including but not limited to requirements to obtain permits and to assure worker safety.

3.6. Endangerment during Implementation. In the event that the Department determines that any circumstance or activity (whether or not pursued in compliance with this Consent Order) creates an imminent or substantial endangerment to the health or welfare of people on the site or in the surrounding area or to the environment, the Department may order Respondent to stop further implementation of this Consent Order for such period of time as needed to abate the endangerment. Any deadline in this Consent Order directly affected by a Stop Work Order under this section shall be extended for the term of such Stop Work Order.

3.7. Liability. Nothing in this Consent Order shall constitute or be construed as a satisfaction or release from liability for any conditions or claims arising as a result of past, current, or future operations of Respondent, except as provided in this Consent Order. Notwithstanding compliance with the terms of this Consent Order, Respondent may be required to take further actions as are necessary to protect public health or welfare or the environment.

3.8. Site Access. Access to the site shall be provided at all reasonable times to employees, contractors, and employees, contractors, and consultants of the Department,

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and any agency having jurisdiction, upon reasonable notice to Respondent. Nothing in this Consent Order is intended to limit in any way the right of entry or inspection that any agency may otherwise have by operation of any law. The Department and its authorized representatives may enter and move freely about all property at the Site at all reasonable times for purposes including, but not limited to: inspecting records, operating logs, and contracts relating to the Site; reviewing of the progress of Respondent in carrying out the terms of this Consent Order; and conducting such tests as the Department may deem necessary. Respondent shall permit such persons to inspect and copy all non-privileged records, documents, and other writings, including all sampling and monitoring data, in any way pertaining to work undertaken pursuant to this Consent Order.

3.9. Sampling, Data, and Document Availability.

3.9.1. Respondent shall permit the Department and its authorized representatives to inspect and copy all sampling, testing, monitoring, and other data generated by Respondent or on Respondent's behalf, in any way pertaining to work undertaken pursuant to this Consent Order.

3.9.2. Respondent shall allow the Department and its authorized representatives to take duplicates of any samples collected by Respondent pursuant to this Consent Order. Respondent shall maintain a central depository of the data, reports, and other documents prepared pursuant to this Consent Order. All such data, reports, and other documents shall be preserved by Respondent for a minimum of six years after the conclusion of all activities under this Consent Order.

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3.9.3. If the Department requests that some or all of these documents be preserved for a longer period of time, Respondent shall either comply with that request, deliver the documents to the Department, or permit the Department to copy the documents prior to destruction. Respondent shall notify the Department in writing at least six months prior to destroying any documents prepared pursuant to this Consent Order.

3.10. Government Liabilities. The Department shall not be liable for injuries or damages to persons or property resulting from acts or omissions by Respondent or related parties, in carrying out activities pursuant to this Consent Order, nor shall the Department be held as a party to any contract entered into by Respondent or its agents in carrying out activities pursuant to this Consent Order.

3.11. Incorporation of Plans and Reports. All plans, schedules, and reports that require Department approval and are submitted by Respondent pursuant to this Consent Order are incorporated in this Consent Order upon approval by the Department.

3.12. Extension Requests. If Respondent is unable to perform any activity or submit any document within the time required under this Consent Order, the Respondent may, prior to expiration of the time, request an extension of time in writing. The extension request shall include a justification for the delay.

3.13. Extension Approvals. If the Department determines that good cause exists for an extension, it will grant the request and specify in writing a new compliance schedule.

OTHER PROVISIONS

4.1. Additional Enforcement Actions. By agreeing to this Consent Order, the Department does not waive the right to take further enforcement actions, except to the extent provided in this Consent Order.

4.2. Penalties for Noncompliance. Failure to comply with the terms of this Consent Order may subject Respondent to civil penalties and/or punitive damages for any costs incurred by the Department or other government agencies as a result of such failure, as provided by Health and Safety Code section 25188 and other applicable provisions of law.

4.3. Parties Bound. This Consent Order shall apply to and be binding upon Respondent and its officers, directors, agents, employees, contractors, consultants, receivers, trustees, successors, and assignees, including but not limited to individuals, partners, and subsidiary and parent corporations, and upon the Department and any successor agency that may have responsibility for and jurisdiction over the subject matter of this Consent Order.

4.5. Integration. This agreement constitutes the entire agreement between the parties and may not be amended, supplemented, or modified, except as provided in this agreement.

4.6. Privileges. Nothing in this Consent Agreement shall be construed to require any party to waive any privilege, including without limitation, attorney-client and attorney work-product. However, the assertion of any privilege shall not relieve any party of its obligations under this Consent Order.

PENALTY

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5.1. Within 90 days of the effective date of this Consent Order, Respondent shall pay the Department a total penalty of \$14,000, which includes \$11,500 as reimbursement of the Department's costs.

5.2. Respondent's check shall be made payable to Department of Toxic Substances Control, shall identify the Respondent and Docket Number, as shown in the heading of this case, and shall be delivered together with the attached Payment Voucher to:

Department of Toxic Substances Control
Accounting Office
1001 I Street, 21st floor
P. O. Box 806
Sacramento, California 95812-0806

A photocopy of the check shall be sent to:

Pamela LePen
Senior Hazardous Substances Scientist
Statewide Compliance Division
Department of Toxic Substances Control
5796 Corporate Avenue
Cypress, CA 90630

James J. Grace
Staff Counsel
Office of Legal Counsel
Department of Toxic Substances Control
1001 I Street, 23rd floor
P. O. Box 806
Sacramento, California 95812-0806

5.3. If Respondent fails to make payment as provided above, Respondent agrees to pay interest at the rate established pursuant to Health and Safety Code section 25360.1

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and to pay all costs incurred by the Department in pursuing collection including attorney's fees.

RIGHT TO A HEARING

6. Respondent waives any right to a hearing in this matter.

EFFECTIVE DATE

7. The effective date of this Consent Order is the date it is signed by the Department.

Dated: 06/04/04

Original Signed by: Steven Kinsbursky
Signature and Typed or Printed Name and Title
of Respondent's Representative

Dated: 06/14/04

Original Signed by: Nennet V. Alvarez
Nennet V. Alvarez, Branch Chief
Statewide Compliance Division
Cypress Office
Department of Toxic Substances Control